

Section 900.115 Persons Subject to the Surcharge

- a) *An annual surcharge is imposed upon each operator who operates a live adult entertainment facility in this State [35 ILCS 175/10].*
- b) The Act applies to operators of live adult entertainment facilities.
 - 1) The operator for purposes of the Act is the person or entity that has managerial and operational control of the live adult entertainment facility and retains the revenues from the operations.
 - 2) An owner that contracts with an entity to manage a live adult entertainment facility and pays the entity a contractual sum to manage the facility is the operator for purposes of the Act.
 - 3) A lessor of the real property is not an operator for purposes of the Act if the lessor has leased the premises to a lessee that operates the live adult entertainment facility and the lessor has no interest in the proceeds derived from the live adult entertainment facility except for payments due under the terms of the lease.
 - 4) A person having a security interest in the real estate upon which the live adult entertainment facility is located, the building that houses the live adult entertainment facility, or the contents or fixtures located on the premises, is not an operator for purposes of the Act.
- c) The Act applies to a facility operated as a business that is open to the public. The Act does not apply to private clubs. The following factors are relevant for purposes of determining if an entity is open to the public or is considered a private club:
 - 1) Whether an entity uses genuine selectivity in the admission of its members, reflected, in part, by:
 - A) permanent and formal procedures established to select and approve applicants; and
 - B) strict limitation on the use on the club's facilities and services by members and their guests only.
 - 2) Whether the membership exercises substantial and meaningful control over the club's operations, reflected by the occurrence of general meetings and an organizational form that permits members to select officers who direct and manage the club.
 - 3) Whether the club advertises or publicizes its activities, events, services, or facilities to nonmembers.
 - 4) Whether the club operates solely for the benefit of its members, or for the profit or benefit of one person or a small group.

- 5) Whether the club observes formalities appropriate for a private club and adheres to them in practice, e.g., establishing bylaws, holding meetings, recording minutes and issuing and tracking membership.
- 6) The club's history and purpose.